

EXHIBIT J

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Mark K. Johnson, Chair
Kate Giard
Dave Harbour
James S. Strandberg
G. Nanette Thompson

In the Matter of the Petition by GCI
COMMUNICATIONS CORP. d/b/a GENERAL
COMMUNICATION, INC. and GCI for
Arbitration Under Section 252 of the
Telecommunications Act of 1996 with the
MUNICIPALITY OF ANCHORAGE d/b/a ATU
TELECOMMUNICATIONS a/k/a ATU
TELECOMMUNICATIONS for the Purpose of
Instituting Local Competition.

U-96-89

**PREFILED REBUTTAL TESTIMONY
OF
DANA TINDALL**

**ON BEHALF OF
GENERAL COMMUNICATION, INC. (GCI)**

SEPTEMBER 29, 2003

1 **I. INTRODUCTION**

2

3 **Q PLEASE STATE YOUR NAME AND THE PURPOSE OF YOUR TESTIMONY.**

4

5 A. My Name is Dana Tindall. I am the Senior Vice President for Legal, Regulatory
6 and Governmental affairs for GCI. I am preparing this testimony to address
7 various policy issues that ACS witnesses have raised in this arbitration. It seems
8 that many of ACS' policy arguments regarding TELRIC and the purpose of the
9 Telecommunications Act, in addition to its irrelevant, inaccurate and inflammatory
10 claims regarding GCI's investment in local services, are intended to distract the
11 Commission from focusing on the fundamental purpose of the proceeding:
12 setting proper TELRIC rates for UNEs consistent with the FCC's TELRIC rules.

13

14 **II. REBUTTAL TESTIMONY**

15

16 **Q. MS. TINDALL, COULD YOU EXPLAIN THE IMPORTANCE OF SETTING UNE**
17 **RATES PROPERLY TO THE CONTINUED SUCCESS OF COMPETITION IN**
18 **ANCHORAGE?**

19

20 A. Yes. Congress passed the Telecommunications Act "[t]o promote competition
21 and reduce regulation in order to secure lower prices and higher quality services
22 for American telecommunications consumers and encourage the rapid
23 deployment of new telecommunications technologies." This statement of intent
24 embodies the delicate balance that must be struck in setting unbundled network
25 element ("UNE") rates. UNE rates must be designed both to promote
26 competition and to encourage deployment of new telecommunications

1 technologies. The FCC has ruled that forward looking total long run incremental
2 costs are the correct pricing point to make an entering competitive local
3 telephone company economically indifferent between leasing lines from the
4 incumbent versus building a new network, or components of a network.

5
6 It is clear at the outset of competition, if UNE rates are set too high, they will act
7 as a barrier to entry, and if they are set too low, they run the risk of discouraging
8 new technologies. However, it is also true that setting UNE rates at the correct
9 point continues to be essential to a competitive market even as competition
10 matures and becomes robustly competitive.

11
12 In a newly competitive market, a CLEC cannot economically launch an entirely
13 new network on day one. Congress recognized this when it provided CLECs
14 with access to the incumbent's network through the unbundling obligations in
15 Section 251(c). Over time, with substantial investment, a CLEC may begin to
16 substitute leased elements for elements of its own network. But until this
17 competitive network passes every home and is as ubiquitous as the incumbent
18 network, both the CLEC and consumers will be dependent upon correctly priced
19 UNEs for the continued availability of competitive services.

20
21 The Commission, itself, has recognized the importance of setting proper UNE
22 rates to the continued viability and success of competition in Anchorage. In
23 setting the current \$14.92 interim loop rate, the Commission recognized that:

24
25 UNE rates are essential to the competition in local exchange
26 service that the Act encourages. If the UNE rates are set too
27 high, GCI cannot be protected by a refund because its ability
28 to offer competing service may be impacted. The potential

1 damage to the ratepayer, GCI, is not merely that it would pay
2 excessive rates that can be returned. The damage is that
3 the competing service GCI is offering may not be viable if
4 interim UNE rates are set too high. The potential harm from
5 establishment of a too high interim rate is that the Act's
6 purpose of encouraging competition may be frustrated.
7

8 Order U-96-89(23) at 6.
9

10 Furthermore, the continuing need for correctly priced UNEs cannot be measured
11 by retail market share. As long as there is only one ubiquitous network, that
12 network constitutes a bottleneck facility that competitors must access in order to
13 provide competitive service. Correctly priced UNEs are just as important in a
14 more mature competitive market in order to ensure that every customer, whether
15 a competitive network passes their home or not, has access to a competitive
16 choice.
17

18 **Q. IF ACS IS SUCCESSFUL IN ITS BID TO RAISE UNE RATES**
19 **DRAMATICALLY, OR AS IT HAS ATTEMPTED FEDERALLY, TO DENY GCI**
20 **ACCESS TO UNES ALTOGETHER, WHAT WOULD HAPPEN TO**
21 **COMPETITION IN ANCHORAGE?**
22

23 **A.** Raising UNE rates dramatically would compel GCI to speed up the investment
24 and deployment of its cable telephony network. However, this network would still
25 have to be deployed over time, and even when fully deployed, it will not be
26 ubiquitous. The fact is that GCI continues to depend on leasing UNEs from ACS
27 and relies on the Commission to set those rates appropriately consistent with the
28 federal law. If, however, UNEs were priced so high as to be economically
29 unattainable, or worse, if UNEs became unavailable, GCI's ability to compete

1 successfully and provide effective competition would be adversely impacted. At
2 the extreme, if UNE rates were excessively raised, GCI possibly would have to
3 reconsider its competitive entry strategy due to the high overall cost. The
4 continued success of competition (notably, effective competition) depends on
5 appropriately priced UNE rates.
6

7 **Q. DO YOU BELIEVE THAT GCI'S SUCCESS IN ANCHORAGE IS A SIGN THAT**
8 **UNE RATES ARE TOO LOW?**
9

10 A. No. ACS seems to have the notion that if competition is successful, there is
11 something wrong. Congress did not pass the Telecommunications Act in order
12 to have limited competition. Nor did Congress put a cap on the amount of market
13 share a competitive carrier can have. Congress passed the act in order to
14 "secure lower prices and higher quality services for American
15 telecommunications consumers." The best way to do this is through robust
16 competition. Alaska and the Commission should be proud of the robust
17 competition that has been achieved in Alaska. Successful and effective
18 competition ultimately inures to the benefit of consumers and the state.
19

20 **Q. DO YOU BELIEVE THAT INCREASING UNE RATES IN ANCHORAGE IS**
21 **NECESSARY IN ORDER TO PROVIDE INCENTIVE TO GCI TO BUILD**
22 **FACILITIES?**
23

24 A. No. GCI has invested \$5.8 million in building a cable telephony network in
25 Anchorage. We plan to move at least 10,000 customers onto that network in

1 2004 alone. GCI has made this investment in the face of UNE rates that ACS
2 has claimed are too low.

3
4 **Q. DO YOU DISAGREE WITH MR. BLESSING'S CONCLUSION IN PARA. 36 OF**
5 **HIS PRE-FILED TESTIMONY THAT BECAUSE OF GCI'S SUCCESS AND ITS**
6 **PLANS TO DEPLOY CABLE TELEPHONY, SETTING THE UNE RATE TOO**
7 **HIGH WILL NOT NEGATIVELY IMPACT COMPETITION IN ANCHORAGE?**

8
9 **A.** Yes, I disagree with Mr. Blessing. While GCI is proud that its cable telephony will
10 pass 98% of the homes in Anchorage, there are still many business customers
11 whom we will not be able to serve over our cable telephony network.
12 Furthermore, not all customers may want to be on GCI's cable telephony network
13 even after the new technology is deployed, but they still may want GCI as their
14 local carrier. In order for all customers to have a choice of competitive carriers,
15 GCI will still need to lease UNEs at an economically viable price. Correctly
16 priced UNEs are key to making sure that all customers are able to have a choice
17 of carriers or technologies.

18
19 The correct economic price for UNEs will continue to be that price which makes a
20 competitive carrier indifferent between leasing facilities from the incumbent, or
21 putting customers on its own facilities. To increase the price of UNEs would
22 increase the cost of competition over all, thus stifling competition, or it would
23 have the effect of depriving customers in Anchorage that are not passed by the
24 cable telephony network of a competitive choice.

1 **Q. DO YOU BELIEVE THAT CONSUMERS IN ANCHORAGE HAVE BENEFITED**
2 **FROM GCI'S COMPETITIVE ENTRY?**

3
4 A. Absolutely. GCI local customers in Anchorage have saved more than \$22 million
5 (\$11.5million residential, \$10.5 million business) since competition began. The
6 price of the most commonly purchased telephone package has dropped 30%
7 (\$22.25 pre-competition, \$15.49 today). Consumers have a choice in Anchorage
8 and are not required to pay the incumbent's prices which are up to 41% higher
9 than GCI.

10
11 In addition to benefiting from price competition, consumers have the benefit of
12 different technology. GCI has built an alternative switching and transport
13 network. And we are in the process of testing an alternative distribution network.
14 For business customers in particular, who cannot withstand a telephone outage,
15 an alternative network provides benefits in redundancy alone.

16

17 **Q. DO YOU AGREE WITH MR. BLESSING'S ASSERTION IN PARA. 31 THAT**
18 **UNE RATES MUST BE INCREASED IN ORDER TO PROVIDE ACS WITH AN**
19 **INCENTIVE TO INVEST AND MAINTAIN ITS NETWORK?**

20

21 A. No. It is my understanding, based on Mr. Chapados' testimony, that local
22 services is ACS' most successful business line. It is providing the majority of the
23 cash to service the company's debt and has a positive and growing cash flow.
24 Further, ACS has large reserves of cash that they could and should use to
25 upgrade and maintain its network. It makes no business sense that ACS would
26 not do so.

1 Furthermore, ACS apparently claims that the new embedded loop rate for
2 Anchorage it reported to NECA is \$21.93, which is a dramatic increase from the
3 \$16.84 embedded loop rate it reported to NECA in 2001. My staff has been
4 unable, however, to validate or examine ACS' asserted new embedded loop rate
5 because the information ACS reported to NECA is not publicly available yet and
6 ACS has not provided us with the complete filing it submitted to NECA for 2002
7 or 2003. Nonetheless, ACS cannot claim that it is unable to invest in the network
8 and yet report to NECA significant increases in its embedded loop rate. There is
9 a seeming contradiction in these positions.

10
11 Moreover, the Commission should not be intimidated into raising UNE rates
12 because of ACS' unsupported claims that it will not invest in its network. Not only
13 does ACS have the resources and incentive to maintain its network, but the
14 Commission has full authority to order it to do so. The Commission should not
15 cave in to ACS' thinly disguised demands to stifle and limit competition.

16
17 **Q. IS GCI INVESTING IN LOCAL SERVICE?**

18
19 A. Yes, GCI has invested \$36.6million in local services since the passage of the
20 Telecommunications Act of 1996. We have put in place switches, fiber optic
21 cable, interconnection facilities, and we are upgrading our cable platform and
22 adding lines to the home for our cable telephony network. ACS also ignores the
23 fact that we invest in local service through our very substantial lease payments to
24 ACS in addition to the \$36.6 million mentioned above. We are probably ACS'
25 largest customer now that the State has announced its termination of its contract
26 with ACS. Mr. Blessing's assertion in Paragraph 29 of his pre-filed testimony

1 (page 36) that "inappropriately low UNE rate has allowed GCI to forgo investment
2 in local service" is laughable in the face of the evidence.

3
4 **Q. DO YOU DISAGREE WITH MR. BLESSING'S ASSERTION IN PARA. 34 OF**
5 **HIS PRE-FILED TESTIMONY THAT UNE RATES MUST BE INCREASED**
6 **OTHERWISE COMPETITION MAY BE ELIMINATED IN ANCHORAGE**
7 **LEAVING GCI AS AN UNREGULATED DOMINANT PROVIDER?**

8
9 A. No. Nor do I understand it. Is ACS saying that if UNE rates are not increased
10 they will give us their remaining customer base and simply walk away? Are they
11 saying that they are going out of business? It would seem they would have to
12 make their intentions clear to their investors if either is true. Although I am
13 enchanted by the thought that ACS believes that we will take 100% of their
14 market share, I don't in fact believe it is true. This is another scare tactic and no
15 more than a bald assertion on the part of ACS.

16
17 **Q. DO YOU AGREE WITH MR. BLESSING'S STATEMENTS IN PARA. 35 OF HIS**
18 **PRE-FILED TESTIMONY REGARDING WHY GCI HAS BEEN SUCCESSFUL**
19 **IN THE MARKETPLACE?**

20
21 A. No. Mr. Blessing is trying to blame UNE rates for ACS' loss of market share in
22 Anchorage while ignoring ACS' own failures. The UNE rate is a sort of
23 scapegoat that ACS likes to hold up to justify its poor performance in the
24 marketplace. ACS management decisions like raising rates in Anchorage by
25 24% imposes self-inflicted harm in the marketplace. Mr. Blessing also ignores
26 other factors such as better quality of service, better service offering and

1 bundles, and other such factors that motivate customers to choose one provider
2 over another.

3
4 Furthermore, in a competitive market, GCI cannot set its retail rates based on
5 UNE rates. GCI must set its prices to the retail market. All you can really say
6 about the role UNE rates played in GCI's success is that they were not set so
7 high that they deterred GCI from entering the market or motivated it to possibly
8 leave the market. Also, since GCI has invested in its own network, UNEs are not
9 set so low to discourage investment. What the evidence actually indicates is that
10 Anchorage UNEs have been priced about where Congress and the FCC
11 intended: there has been successful entry into the market and GCI is investing in
12 its own network.

13
14 **Q. DO YOU BELIEVE THAT ACS CONTINUES TO BE A "DOMINANT CARRIER"**
15 **NOTWITHSTANDING GCI'S SUCCESS IN THE MARKETPLACE?**

16
17 **A.** In looking at the question of dominance in the local market, the Commission
18 should distinguish between the UNE market, which is the provision of unbundled
19 elements, and the retail market. ACS clearly has market power in the provision
20 of UNEs and should be treated as a dominant carrier. This will be true until there
21 is enough competition among UNE providers such that ACS will no longer own a
22 bottleneck facility. The question of dominance in the provision of unbundled
23 elements does not turn on retail market share, but rather the number and size of
24 providers in the unbundled elements market. In the retail market, ACS has
25 approximately 50% market share, and is arguably no longer dominant.

1 **Q. DO YOU DISAGREE WITH MR. KEN SPRAIN'S CLAIM IN PARAGRAPH 14**
2 **OF HIS PRE-FILED TESTIMONY THAT "GCI HAS THE LUXURY OF**
3 **TARGETING ONLY THOSE AREAS WHERE IT THINKS IT CAN EARN THE**
4 **MOST MONEY"? DOES GCI TARGET ONLY CERTAIN TYPES OF**
5 **CUSTOMERS IN ANCHORAGE?**

6
7 A. Once again, reality is staring ACS in the face and ACS chooses to ignore it. GCI
8 serves both business and residential customers in Anchorage. GCI's market
9 share is split evenly between the two. While it may be true in the lower-48 that
10 some CLECs target the more lucrative business customers exclusively, it is not
11 true in the Anchorage market.

12
13 **Q. DO YOU DISAGREE WITH MR. TOM MEADE'S CLAIM IN PARA. 11 OF HIS**
14 **PRE-FILED TESTIMONY THAT ACS BEARS ALL THE RISK OF "STRANDED**
15 **INVESTMENT" AS A RESULT OF GCI'S PLANS TO DEPLOY CABLE**
16 **TELEPHONY? DOES GCI BEAR ANY RISK?**

17
18 A. No. I don't agree. GCI has invested \$5.8 million in its cable telephony network.
19 There is no guarantee that customers will want to switch to this technology.
20 There is no guarantee that GCI customers today won't be ACS customers
21 tomorrow. I would say both ACS and GCI bear commensurate risk. It is
22 important to note ACS' misuse of the word "stranded investment." Simply
23 because ACS loses a customer to GCI does not mean that ACS has suffered
24 stranded investment. ACS continues to have the ability to compete to win back
25 that customer. ACS' facilities are not rendered "stranded." Likewise, when GCI
26 deploys cable telephony, GCI has no assurance that the customer will stay with

1 GCI. If the customer leaves GCI, GCI's investment in the cable telephony to
2 serve that customer is not rendered "stranded" either.

3

4 **Q. DO YOU DISAGREE WITH TOM MEADE'S ASSERTION IN PARA. 16 OF HIS**
5 **PRE-FILED TESTIMONY THAT GCI BEARS NO RISK WITH RESPECT TO**
6 **CAPITAL INVESTMENTS WHEN GCI LEASES LINES FROM ACS TO**
7 **PROVIDE COMPETITIVE LOCAL SERVICE?**

8

9 A. GCI has invested \$36.6 million in capital to install switches, optical fiber ,
10 SONET, line cards, secured features, and transparent LANs in order to provide
11 competitive local service over leased lines from ACS. Because ACS has
12 significant market power in the provision of leased lines, GCI bears significant
13 risk. ACS is seeking to restrict or eliminate the availability of UNE loops before
14 the FCC. ACS has clearly interfered in the past with our ability to provide
15 competitive service at parity. All of these actions place our investment in local
16 facilities at risk.

17

18 **III. CONCLUSION**

19

20 **Q. WOULD YOU SUMMARIZE YOUR REBUTTAL TESTIMONY?**

21

22 A. ACS makes a number of assertions in its testimony that simply conflict with
23 reality and the evidence before the Commission. There is no evidence before
24 this Commission indicating that UNE rates are too low. ACS' entire effort – from
25 making bald assertions regarding the effect of rates, to threatening the
26 Commission that the telephone network won't be maintained, to claiming that

1 GCI will be the new monopolist – conflicts with reality. It is designed with one
2 objective: to encourage the Commission to take action that would stifle or restrict
3 competition. The Commission should not fall for it. Competition is the policy of
4 this country for good reason: it is good for consumers.

5

6 **Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY AT THIS TIME?**

7

8 **A.** Yes, it does